identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

B5

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 18 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a physician-scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a statement. For the reasons discussed below, we uphold the director's findings. Ultimately, nothing in the record demonstrates how the national interest in securing sufficiently trained medical geneticists, an area in which there is alleged to be an extreme shortage, would not be served by the alien employment certification process, a process designed to address this exact situation.

While we will evaluate all of the evidence below, we note that three references who claim no personal knowledge of the petitioner have all worked at the same institutions as the petitioner according to their curriculum vitae. Specifically, in 2009, [redacted], who has a Ph.D. in marine biology rather than medicine, asserts that his evaluation is not based on "personal knowledge" of the petitioner. According to his curriculum vitae, however, in 2009 [redacted] took his sabbatical leave at Baylor College of Medicine where the petitioner has worked since 2006. In fact, [redacted] indicates on his curriculum vitae that at Baylor, he worked in the laboratory of [redacted], the principal investigator of the petitioner's clinical studies at Baylor.

[redacted], asserts that his letter is not based on a personal relationship with the petitioner. The petitioner, however, was a house-staff physician at [redacted] from 2004 through 2006. Moreover, [redacted] explicitly states that the [redacted] has "highly selective criteria to join" and requires "a demonstration of excellence in the field." As will be discussed in more detail below, however, this assertion is contradicted by the record.

Finally, [redacted] asserts that his evaluation is "not through personal knowledge." According to his attached curriculum vitae, however, [redacted] served as [redacted] in 2007 and 2008. The misleading claims in these letters reduce the credibility of the authors' remaining statements.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Initially, counsel asserted that the petitioner is a member of the professions holding an advanced degree. On appeal, counsel asserts that the petitioner is also an alien of exceptional ability. The issue of exceptional ability, however, is moot because the record establishes that the petitioner holds a medical degree from Gandhi Medical College. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit. The director then questioned whether the proposed benefits of the petitioner's work would be national in scope. In her initial cover letter, counsel asserted that the petitioner has reached a large and distinguished audience through his publications and presentations, is one of the most talented geneticists nationally and "frequently treats patients from different parts of the country on referral."

On appeal, counsel asserts that the petitioner is "able to master many of the most advanced procedures in the field and also to teach these procedures to peers, both junior and senior, thereby creating a ripple effect in making the performance of these very important cutting-edge modern procedures more widespread on a national level." Counsel then asserts that the petitioner's "prolific record of publication and presentation" also demonstrates a national impact.

In addressing this issue in *NYSDOT*, the AAO stated:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious

> intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. Significantly, Congress is presumed to be aware of existing administrative and judicial interpretation of statute when it reenacts a statute. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978). In this instance, Congress' awareness of *NYSDOT* is a matter not of presumption, but of demonstrable fact. In 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision, such as by applying the waiver to all physicians practicing in a complicated specialty and/or at a prestigious medical center. Instead, Congress let the decision stand, apart from a limited exception for certain physicians working in shortage areas, as described in section 203(b)(2)(B)(ii) of the Act. While the petitioner submitted reports attesting to a shortage of physicians in general and specialists in medical genetics specifically, the petitioner does not seek a waiver under this provision. Because Congress has made no further statutory changes in the decade since *NYSDOT*, we can presume that Congress has no further objection to the precedent decision.

Applying the above reasoning quoted from *NYSDOT*, 22 I&N Dec. at 217, n.3, to the matter before us, the treatment of patients at a single hospital does not result in benefits that are discernible at the national level. Similarly, training subordinates in procedures developed by others provides benefits that are negligible at the national level. Thus, the only means by which the petitioner could qualify for a waiver of the alien employment certification process is through his research experience.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Counsel included an exhibit labeled "Honors, Awards and Distinctions." The exhibit includes a December 30, 2008 from [redacted] advised the petitioner that an unidentified individual or entity had nominated the petitioner "as a candidate for the [redacted] Award in Medical Genetics." According to [redacted] the award includes a $20,000 cash prize. The petitioner submitted Internet materials about the award confirming that it is designed to honor a physician or scientist "completing his or her training in the area of medical genetics." [redacted] states that eligible candidates must have completed, within the past four years, all of the training leading to American Board of Medical Genetics certification. [redacted] advises that if the petitioner wishes to pursue his "candidacy" for the award, he must [redacted] cumentation to the award committee, including his curriculum vitae, an exemplar article and two letters of recommendation. Given the entire content of the letter, it does not appear that the nomination process evaluated the petitioner's eligibility as a candidate or included any recommendation letters. Rather, the "nomination" appears to be more of an invitation to nominate himself. Regardless, the petitioner submitted no evidence that he pursued his candidacy, that only a select few physician trainees received nominations or, more significantly, that he actually won this prize.

Also in this exhibit, counsel included a letter from [redacted]. [redacted] confirms that the petitioner is "enrolled in the [redacted]" [redacted] explains that this is a coveted track that enrolls the best house staff physicians and, at present, has only four physicians enrolled. While competitive, it remains that a residency program is still a training program. Enrollment in an on-the-job training program is not indicative of a track record of success with some degree of influence in the field as a whole.

Counsel also included in this exhibit a certificate from Fairview Hospital recognizing the petitioner as [redacted] July 1, 2004 – June 30, 2005. Such local recognition from the petitioner's own employer cannot demonstrate his influence in the field beyond that employer.

Finally, counsel included the petitioner's examination results and a certificate from Gandhi Medical College acknowledging the petitioner's thesis on depression and diabetes and certifying his adjudication as "Best Outgoing Student." Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *NYSDOT*, 22 I&N Dec. at 219, n.6. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* None of the petitioner's academic achievements demonstrate his influence in the field of medical genetics, the area in which he proposes to benefit the national interest.

Even if we considered the above evidence to rise to the level of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations, such recognition is merely one category of evidence a petitioner may submit to demonstrate exceptional ability, a classification that normally requires an approved alien

employment certification. Section 203(b)(2) of the Act; 8 C.F.R. § 204.5(k)(3)(ii)(F). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on recognition for achievements and significant contributions, while relevant, are not dispositive to the matter at hand. *See NYSDOT*, 22 I&N Dec. at 222.

Similarly, the petitioner submitted evidence of his membership in the American College of Physicians (ACP). Contrary to [redacted] assertions, the materials from the association's website, submitted by the petitioner, reveal that the ACP is open to physicians who have been certified in internal medicine or a combined internal medicine specialty or neurology. The website materials do not state or suggest that candidates must provide evidence demonstrating excellence in the field as stated by [redacted]. The petitioner also submitted evidence of his membership in the American Society of Human Genetics (ASHG). According to the materials submitted, ASHG is the primary professional membership organization for human genetics specialists worldwide with 8,000 active members. The petitioner did not submit evidence of ASHG's membership requirements. Once again, professional memberships are merely one category of evidence that may be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). We reiterate that, because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *See NYSDOT*, 22 I&N Dec. at 222. The record contains no evidence that these memberships are indicative of a track record of success with some degree of influence on the field as a whole. Rather, they appear commensurate with any physician practicing in the petitioner's area of specialty.

The petitioner submitted evidence that he had coauthored two published articles related to medical genetics, a letter to the editor of [redacted] on hereditary hemorrhagic telangiectasia and four abstracts, none of which relate to medical genetics. The petitioner also submitted two unpublished manuscripts, one of which was under review with [redacted]. The petitioner also submitted evidence of four poster presentations. Finally, the petitioner submitted evidence of his presentation at a Baylor College of Medicine Molecular and Human Genetics Retreat.

The petitioner submitted evidence regarding the prestige of the journals that carried the petitioner's articles and the conferences where he displayed his poster presentations. We will not, however, presume the influence of the articles, abstracts and poster presentations from the journals and conferences in which or at which they appeared. Rather, it is the petitioner's burden to demonstrate the impact of the individual article or presentation.

As evidence of the influence of the petitioner's work, the petitioner submitted evidence that [redacted] lists one of the petitioner's articles in its bibliography on copy number variations (2009). The petitioner's article is one of at least 37 articles in the bibliography. In addition, the Rare Chromosome Disorder Support Group's newsletter, *Unique*, advises that researchers at Baylor "have suggested that a 6q25.2q25.3 microdeletion syndrome exists," citing one of the petitioner's articles for the details of this study. In addition, a listing of 81 current

papers for a week in March 2009 on the online Schizophrenia Research Forum includes one of the petitioner's articles. This evidence reveals that the petitioner's research is accessible. More specifically, his work is minimally referenced in a support group newsletter not aimed at other medical geneticists and in large bibliographies. This evidence does not, however, demonstrate any influence in the field.

The petitioner submitted a letter from [redacted], thanking the petitioner for presenting a lecture. The petitioner also submitted a letter from [redacted] thanking the petitioner for his lecture. These lectures cannot demonstrate the petitioner's influence beyond Houston, where he currently works, and Fairview Hospital, where he previously worked.

Counsel included an exhibit entitled [redacted]. In this exhibit, [redacted] asserts that the petitioner has been the "lead co-investigator" for his research studies. The review board materials accompanying [redacted] however, do not support this assertion. On all of these documents, [redacted] is listed as the principal investigator and the petitioner is listed as one of several co-investigators, none of whom are identified as a "lead co-investigator."

Also included in this exhibit is a letter from [redacted] who advises that the petitioner was a house-staff physician at Fairview Hospital from 2004 through 2006, which involved teaching and training rotating medical students and lower level residents in internal medicine. [redacted] does not explain how this role demonstrates the petitioner's influence in the field of genetic medicine. Rather, it appears that the petitioner's role there was commensurate with his level of training.

In addition, [redacted] asserts that the petitioner has been "actively involved with interviewing candidates for medical genetics residency and fellowship positions." While these duties may have value for Baylor, they do not demonstrate the petitioner's influence in the field of medical genetics as a whole.

The last evidence included in this exhibit is a letter from [redacted], who asserts that the petitioner has been involved in the teaching of medical students and residents at Baylor. Once again, this evidence does not demonstrate the petitioner's influence beyond his employer. We stress that the fact that some of these students and residents may move to other locations does not demonstrate the petitioner's track record of success with some degree of influence on the field as a whole. In other words, the waiver is not a blanket waiver for any alien who has ever instructed a subordinate or student.

The petitioner submitted a letter from [redacted] inviting the petitioner to review [redacted] textbook chapter on RNA Technologies in Cardiovascular Medicine and Research. This request appears to be an informal request from a colleague in Houston rather than an independent request from

the publisher of the textbook. This letter does not demonstrate the influence of the petitioner's work beyond Houston.

The remaining evidence consists of reference letters, some of which contain hyperbolic conclusions inconsistent with the remaining evidence of record. As stated above, some of the references also misrepresent their level of personal knowledge of the petitioner, reducing the credibility of their remaining statements.

[redacted] asserts that the petitioner has developed a subspecialty in adult genetics and the interpretation of results of genetic testing. Specifically, [redacted] asserts that "few of his peers in adult genetics have the significant amount of training necessary to accurately discern the results of these state-of-the-art genetic tests." [redacted] implication that the majority of adult geneticists do not have the necessary training to read the results of genetics tests is disturbing and requires supporting evidence, such as the results of a major study. Regardless, special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

[redacted] further asserts that the petitioner has also distinguished himself by evaluating and treating patients with inherited bone disease at "the world-class facility, the Skeletal Dysplasia Clinic at the Texas Children's Hospital, which is the primary pediatric teaching hospital of Baylor College of Medicine." [redacted] provides no examples of the petitioner's novel evaluation and treatment techniques or how those techniques have influenced the field as a whole. Rather, he asserts that the petitioner is a "lead co-investigator" of one study and an investigator of another study. As stated above, the review board materials submitted do not distinguish the petitioner from his co-investigators. Regardless, without evidence of how these studies have already influenced the field, the petitioner's role in these studies is not persuasive evidence.

[redacted] next discusses the petitioner's work at Baylor's metabolic clinic, "a national and international referral center for inborn errors of metabolism." [redacted] concludes that the petitioner "is one of less than three hundred physicians in the nation who have the skills to control the complex abnormalities observed in these patients." Once again, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* Moreover, simple exposure to advanced technology constitutes, essentially, occupational training that can be articulated on an application for an alien employment certification. *Id.* Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* [redacted] provides no examples of independent hospitals that have been influenced by the petitioner's work with genetic metabolic conditions.

In addition, [redacted] asserts that the petitioner has a "renown reputation" based on his results. [redacted] then provides an anecdote where the petitioner conducted the necessary tests to determine that the blood of an infant suffering seizures had high ammonia levels which were then treated. [redacted]

concludes that due to the petitioner's insight, "the infant was maintained in a metabolically stable state until he was able to get a liver transplant, which is the only definitive treatment for the infant's condition." [redacted] does not provide statistics that would support a conclusion that most infants with this condition die because the treating physician was unaware of the necessary tests. [redacted] also fails to provide examples of hospitals that, due to this case, are now performing previously unperformed tests on seizing infants. While we do not question the importance of the petitioner's actions for this patient, his ability to perform life saving actions as a physician is not necessarily indicative of his influence on the field of genetic medicine.

Finally, [redacted] asserts that the petitioner developed "a novel mouse model with a defect in nitric oxide synthesis in the pancreatic cells that will help understand its role in diabetes mellitus." As stated above, original innovation, such as demonstrated by a patent, is insufficient by itself. *Id.* at 221, n. 7. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* [redacted] does not provide examples of other independent research teams using this mouse model.

[redacted] asserts that the petitioner "employed a cutting-edge technique called comparative genomic hybridization to detect the loss of gain of genetic material." [redacted] further asserts that through this process, the petitioner "has described three novel microdeletion syndromes and has delineated at minimum five genes that cause intellectual impairment." [redacted] concludes that this work has "revolutionized the way patients with intellectual impairments are being evaluated, treated, and counseled." If true, it would seem that substantial objective evidence would be available, such as new guidelines for multiple hospitals citing this work and letters from high level officials at independent hospitals confirming a change in evaluation, treatment and counseling techniques based on the petitioner's work. The record contains no such evidence. In fact, the record does not even contain evidence that this work has been cited in articles that apply this work. Without such evidence, [redacted] statement seems hyperbolic, especially in light of his misrepresentation of his personal association with the petitioner.

[redacted] has no disclosed association with the petitioner. [redacted] reviews the petitioner's credentials and concludes that the petitioner enjoys "national and international acclaim among geneticists around the world." This statement appears highly conclusory and unsupported by examples of the petitioner's work actually being applied in the field rather than simply disseminated. USCIS need not accept primarily conclusory assertions.[1]

[redacted] an associate professor at the Johns Hopkins School of Medicine with no disclosed association with the petitioner, also states that the petitioner "has achieved national and international recognition and extraordinary distinction for his clinical work and research studies that place him at the top of his field and among the highest tier of physician-scientists in the country." The

[1] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

accomplishments of the petitioner's references, however, overwhelmingly dwarf the petitioner's record. For example, [redacted] chairs a department, has authored 20 papers cited 100 times or more, serves on four editorial boards and lists numerous mentored students on his curriculum. While we acknowledge that the petitioner need not demonstrate this level of recognition for the benefit sought, the lack of evidence supporting this clearly hyperbolic conclusion reduces [redacted] credibility.

[redacted] also notes that the National Institutes of Health (NIH) supports the petitioner's research. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the alien employment certification requirement.

[redacted] further asserts that the petitioner's studies "have had a broad impact on diseases that severely affect the nation." As stated above, USCIS need not accept primarily conclusory assertions.[2] [redacted] provides no examples of this impact and does not suggest that Johns Hopkins has adopted guidelines based on the petitioner's work or otherwise changed its evaluation and treatment standards based on the petitioner's work.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of widespread notoriety without providing specific examples of how those innovations have influenced the field. Merely repeating

[2] *1756, Inc.*, 745 F. Supp. at 15.

the legal standards for the benefit sought does not satisfy the petitioner's burden of proof.[3] The purportedly independent letters do not suggest the authors have applied the beneficiary's work. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

---

[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.